Supreme Court, U.S.
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No. 06-355

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL MULLIGAN

PETITIONER

vs.

CITY OF CHANDLER, DONALD SLOMCINSKY AND TERRY SLOMCINSKY

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MICHAEL MILLIGAN
IN PROPRIA PERSONA
3510 WEST TOLEDO STREET,
CHANDLER, ARIZONA 85266
TELEPHONE: 602-809-2278

QUESTIONS PRESENTED FOR REVIEW

This case raises a **critical question:** Did Michael Milligan acting Pro Se get a fair and impartial hearing with due process and equal protection under the law in this case?

The second **critical question** : What is the legal definition of a trial that meets the standards of due process and equal protection under the law re: **witnesses, discovery, time allowed to trial case?**

The third **critical question:** Is the Notice of claim rule set forth under ARS 12.821.01 subd "A" constitutional? Does the immunity rule and the Notice of claim rule set forth in ARS 12.820.01 and ARS 12.821.01 subd "A". negate due process and equal protection under the law for Pro Se litigants and other parties? Do these laws show preferential treatment for public officials and municipalities?

The fourth **critical question** : Does the Notice of Claim Rule ARS 12.821.01 subd "A" require the entities who are using this law as defense against claims filed against them to disclose to the Petitioner the need to file a Notice of Claim within 180 days to the Respondents?

PARTIES TO THE PROCEEDINGS

Michael Milligan
3510 West Toledo
Chandler, Arizona
In Propria Persona

Judy K. Skousen
Assistance City Attorney
City of Chandler
Mail Stop 602
P.O. Box 4008
Chandler, Arizona 85244-4008
Attorney for the Respondents

Terry Goddard, Arizona Attorney General
Michael G. Prost, Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007
Attorneys for State Defendants

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5. ARS 12821.1 subd A - 180 File Notice
6. Federal Rule of Procedure 56

The Federal Rules of Civil Procedure, Rule 56 provides in relevant part that the judgment sought shall be rendered [if] the pleading, affidavits, if any, show that there is no genuine issue as to any material fact. The court at the hearing by examining the pleadings and evidence before it and by

interrogating counsel, shall if applicable ascertain what material facts exist without substantial controversy and what material facts are in good faith controverted. The judgment sought shall be rendered [if] the pleading, affidavits, if any, show that there is no genuine issue as to any material fact. The court at the hearing motion by examining the pleadings and evidence before it and be interrogating counsel, shall if applicable ascertain what material facts exist without controversy.

7. Rules 26 (a) (1) Federal Rules of Civil Procedure of Rule 26 through Rule 37(a) through (d) provides Respondents are to provide proper discovery requested by Petitioner.

OPINIONS BELOW

The Petitioner respectfully prays that a writ of certiorari be issued to review the Judgment below: Appeal from a decision the Arizona Federal District Court in Phoenix, Arizona - CV-02-00309-PHX-MHM - No - 04-15910. The Opinion of the United States Court of Appeals appears at Appendix "A" to the Petition and is now reported as an unpublished Memorandum filed on April 7, 2005. The Rehearing of this Memorandum was Denied Rehearing on April 25, 2006. Micheal Milligan - Petitioner v. City of Chandler etal Respondents, See: Federal 135 Fed App. 7 ((9th. Circuit 4/7/2005, Rehearing Denied 4/25/06 Judgement filed May 9, 2006. At the Ninth Circuit Court of Appeals before Judges Kozinski, Hawkins, and Clifton, Circuit Judges.

ARGUMENT PRESENTED

This case raises this very critical issue of can a Pro Se litigant get a fair and impartial hearing of due process and equal protection under the law in the Arizona Court System.

The answer by the Petitioner is an absolute no! The reasons for this answer and the reasons why this Petition should be granted are as follows:

This case which has been in process both in the Superior Court of Arizona, the Arizona State Court of Appeals, the District Court of Arizona and the Ninth Circuit Court of Appeals for over 5 years. During this time thousands of dollars provided by the Petitioner at great sacrifice have been spent on preparation of legal pleadings and court costs. He has also spent thousands of hours of personal research trying to get a trial on the merits of his case. During the past five years in all of these Courts the Petitioner has been given a total of (15) minutes in one hearing in the Superior Court of the State of Arizona to present his case for remedy of his grievances against Respondents for breaching his constitutional rights and making his life a living hell! In this hearing the Judge controlled most of the time and had no interest in what he was trying to say. There was no presenting evidence or examining witnesses and there was no hearing on the merits of his case. Res Judicata cannot possibly be applied to this District of Arizona Court case as reviewed by

the Ninth Court of Appeals as there was never a trial at any time given to the Petitioner in either the State Superior Court or the District Court of Arizona. There was a mock hearing with an instant granting of Summary Judgment to the Respondents that was construed to be a trial by the Courts however the entire case and hearing was a sheer mockery of justice. Petitioner who believes in the constitutional protection of the rights of common people filed his complaint for damages against the Respondents in District Court of Arizona for the violation of his constitutional rights in the lower Court. He included the Superior Court and the presiding Judge but of course they were dismissed as being immune. The entire matter was an abuse of judicial power which favored a privileged municipality and its employees. The case in the Superior Court of Arizona had four presiding Judges who shuffled his case back and forth and it is very doubtful if any one of the Judges read the pleading filed by Petitioner. In all there were 28 pleading were filed in this lower Court including denying to compel discovery to the Petitioner under ARCP 37 which makes discovery mandatory. The Respondent s refused to provide discovery to the Petitioner and the Superior Court refused to compel them to provide discovery. He was never allowed to see discovery from the Respondents, examine witnesses, or present his case to a jury which is guaranteed to him under the Arizona and United States Constitutions. In the

District Court of Arizona the Petitioner was also denied discovery from the Respondents and no hearing was held prior to granting of Summary Judgment to Respondents. In the District Court after one year of pleading being filed and without any hearing, or without receiving discovery from the Respondent, the District Court Judge reversed its first opinion filed on March 31, 2003 allowing the Petitioner three constitutional counts to proceed to trial upon. See: Order from the District Court of Arizona dated 3/26/2003 and filed on April 31, 2003 in the District Court of Arizona. The case Number is CIV-02-0309-PHX-MHM with Michael Milligan, Plaintiff v. City of Chandler, Arizona etal Defendants, **The District Court Judge Mary H. Murguia ruled and ordered as follows:** [It is hereby ordered that the Motion to Dismiss filed by Defendants State of Arizona, Maricopa County, Arizona, Superior Court of Arizona, and Judge Robert D. Myers is granted. Defendants State of Arizona, Maricopa County, Arizona, Superior Court and the Honorable Robert D. Myers are Dismissed with Prejudice. Twice ordered for Maricopa County. It is further ordered that the motion to dismiss filed by the Defendant Maricopa County is granted. Defendant Maricopa County is Dismissed with It is further ordered that the motion to dismiss filed by Defendants City of Chandler, Donald Slomcinsky and Terry Slomcinsky is granted in part and denied in part. Count V is dismissed with

Predjudice. Counts I, II, IV, do not state claims against the City Defendants and are hereby dismissed. [The order does not say that these were dismissed with prejudice]. The City Defendants Motion to Dismiss the remaining claims of Counts III, VI and VII is Denied. Signed on March 26, 2003 by Federal District Court Judge Mary H. Murguia. In this order the District Court of Arizona with much contemplations and research took proper jurisdiction over the constitutional claims filed by the Petititioner Michael Milligan. On March 31, 2004 after waiting for one full year and two days the District Court Judge Mary H. Murguia wrote a 12 page order refuting the decision that she had made one year earlier. The Court did not cause or compel the Respondents to provide discovery to the Petitioner which would have proved his case, nor did they order hearings for testimony or rebuttal, nor did they receive any additional information from the Respondents that would have changed the mind of the court from its original decision. The Court simply after waiting a full year changed its position and granted Respondents Summary Judgment on the claims it has denied one year earlier. [It is ordered that Defendants motion for summary judgment is granted as to Plaintiffs, remaining claims in this lawsuit Counts III, VI, VII. Is further ordered that Judgment will be entered accordingly. It is further ordered that Judgment shall be entered in accordance with the Court's order

dated March 31, 2003 dismissing all claims with prejudice against Defendants State of Arizona, Maricopa County, Superior Court, the Honorable Robert D. Myers and Maricopa County, and dismissing Count V with prejudice, and Counts I II and IV as to the Defendants of City of Chandler, Donald Slomcinsky and Terry Slomcinsky dated March 29, 2004 and signed by Judge Mary H. Murguia. This order is completely in violation of the Federal Rules of Civil Procedure as a Summary Judgment should not be granted without discovery being completed. It is very easy to win with false allegations when the Court refuses to compel the Respondents to provide discovery. This is why a jury trial is so necessary. The Judges and the municipalities are given absolute favor under the law and protect one another. They are immune even if they are grossly wrong and are given imm ıity regardless of what they do. The common people who do the work and pay the taxes are locked out of the courts with wrongful Summary Judgment issued to influential people and entities they are employed by. The Petitioner did not receive justice or due in this matter he was simply sent through the system with no consideration by any Judge as his case was immediately predetermined to be frivolous, and without merit as he was a pro se litigant.

See: Picking v. Pennsylvania, 151 F.2d, 240, Third Circuit Court of Appeals " where a plaintiff pleads pro se in a suit for protection of his rights

under the constitution the court shall endeavor to

construe plaintiffs pleadings without technicalities."

See: Walter Process Equipment v. Food Machinery, 382 US 172 (1965) It was held that in "a motion to dismiss, the material allegations of the complaint are to be taken as admitted." From this vantage point, courts are reluctant to dismiss complaints unless it appear the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." See: Conley v. Gibson, 355 U.S. 41 at 48 - (1957)

See: Pucket v. Cox, "It was held that a pro se complaint requires less stringent reading than one drafted by an lawyer, 456 F.2d 233, Sixth Circuit USCA (1972).

The Federal Rules rejects the approach that the pleadings are a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principal of pleadings to facilitate a proper decision on the merits. In according to Rule 8(f) FRCP all pleadings construed to do justice."

The answer is once again no! Unless the Supreme Court grants this petition and forces a court to actual consider the facts in this matter after proper discovery has been conducted and provided to the Petitioner he will never see justice as the system is absolutely corrupt.

May The Supreme Take Judicial Notice

Had the Petitioner been give a jury trial which is his right law guaranteed by the constitution where he could have presented evidence and examined witnesses he would have accepted the decision of the Court. He however has spent five years in the Courts and has wasted time and energy along with helping to clog the courts when a simple trial as guaranteed by the constitution would have solved the matter. After 5 years he has been denied any any legal remedy for his grievance against the City of Chandler and it employees. They have used their influence upon the Courts to win their case without having to provide any discovery to the Petitioner, provide evidence or witnesses to prove their case. They under the color and protection of State Law has caused great damages to his property, his finances and to his will and emotions. The greatest shock has been with all of the guarantees within our State and United States constitutions he has failed to be admitted for trial into a court of law.

Is The Notice of Claim Rule Constitutional?

This case raises the critical issue of are the Arizona statutes which provide immunity to a the county and state employees and to their entities under ARS 12.820.01 and 12.821.01: subd A. constitutional? Do these statutes violate the due process and equal protection guarantees made to the Petitioner in the Arizona and United States Constitutions by showing privilege and preference

to a public entity and their employees which allows to them abuse their power and leave the untrained and those who lack knowledge without any remedy under the law. In the State of Arizona complaint filed by the Petitioner, the final Superior Court Judge which was one of four, granted a Summary Judgment to the Respondents in a short 15 minute session citing the Petitioner had not filed a Notice of Claim with the Respondents within 180 days under ARS 12.821.01 subd A. The Petitioner Michael Milligan had many personal meetings with the City of Chandler's Mayor, several City Councilmen, and the Chandler Police Department notified them of his claim against them for grievances they were committing. The entire City of Chandler, Arizona administrative staff was aware of his many grievances against them and their employees for their abuse of power in the violations of his constitutional rights. He filed his complaint for damages without any knowledge of the 180 days Notice of claim rule under ARS 12.821.01 subd A as his claims were more than $10,000 jurisdiction in the lower Justice Court and higher than $50,000 which would go to arbitration in the Superior Court. The Respondents were served with the complaint accepting service by responding to all of the pleadings. The Petitioner filed 28 pleadings in the Superior Court under four different Judges. Not one of the Judges who were over the case informed the Petition that he had to file a 180 Notice of Claim to

the Respondents. The Respondent had responsibility along with the Judges who presided over this case to notify the Petitioner of his need to file a 180 claim. By their failure to notify the Petitioner and to provide disclosure of this Notice of Claim rule, Respondents waived their right to seek any type of relief by using this hidden section of the law as a defense? See Ry-Tan Const Inc. V. Washington Elementary District School 379 Ariz. App Div 1 7/82004; where ARS 12.801.01 subd A was waived and could no longer be used as a defense for the claims against Washington Elementary School District. Summary Judgment based upon this section of the Law should not be allowed as it clearly assumes that every person who is a pro se litigant is aware of this Notice of Claim rule and it is used openly by Judges to negate the due process of law and equal protection of those litigants who are unaware of such a law. This law also places the constitutional rights of each pro se litigant second to the guarantees made to them under the Arizona and United States Constitutions. It very much appears that the Superior Court Judge knew of this rule and refused to compel the Respondent to provide discovery to the Petitioner as he knew he was going to grant Summary Judgment to the Respondents under this section of the law. Why did they allow the case to proceed for a 6 months knowing they were going to use this rule as a bar to the Petitioners complaint and throw it out?

STATEMENT OF JURISDICTION

The United States Supreme Court has proper jurisdiction in this matter as the Ninth Circuit Court of Appeals entered its judgment on May 3, 2006. The jurisdiction for the court is 28 U.S. C. : 1255

STATEMENT OF THE CASE

1. During 1987, Petitioner purchased a home located at 3510 West Toledo Street, Chandler, Arizona 85226. Prior to the purchase of this home by the Respondents in 1985, The City of Chandler, Arizona enacted a zoning ordinance regulating satellite dishes in the City of Chandler. The ordinance was to control the aesthetics within the city neighborhoods. This law violated the constitutional rights of the Respondents

3. Subsequent to the enactment of the City of Chandler ordinance, the Federal Government, through its agency, the Federal Communications Commission (FCC), enacted a law which prohibited the local governments from enacting ordinances that restricted satellite dishes. Per Federal law, the City of Chandler could not limit or prevent satellite reception or impose costs upon dish owners under the FCC rules. The FCC ruling rendered the City of Chandler satellite ordinances null and void. The City of Chandler ignored the ruling and continued to enforce their own ordinance against citizens of Chandler, Arizona.

4. In 1992, the City of Chandler, Arizona cited Respondents for being in violation of their satellite ordinance. The City of Chandler, Arizona pursued

prosecution against Respondents refusing to accept a ruling made by the Federal Communications Commission governing satellite dishes.

5. On July 17, 1992, an article appeared in the *Arizona Republic* of the City of Chandler about their attempts to violate the constitutional rights of the Respondents by trying to enforce an ordinance which was clearly against Federal law. This dispute of Petitioners's right to have a satellite dish with the City of Chandler "fathers" who control the city was the very beginning of a 12-year rampage against him for disputing their city codes. Petitioner's rights to life, liberty, and pursuit of happiness were immediately violated by the harassment from the Respondents. The harassment has continued for the past 12 years.

6. The Petitioner has born the expense of the exposure and burden of researching the City ordinance prohibiting the use of satellite dishes. His efforts and time were required due to the unnecessary reckless and negligent behavior of the City of Chandler officials who were trying to make the City of Chandler a massive Home Owners Association controlled by its officials and their desires to promote and maintain a certain aesthetic look for homes in the City of Chandler. Respondent violated Petitioner's right to life, liberty and pursuit of happiness.

7. Once again because of the resistance of the Petitioner against the City of Chandler has been subjected to a malicious 12 year rampage of unholy acts by the City of Chandler against him. He has

been profiled as a vexatious uncooperative person who is a threat to the aesthetic plans the City of Council of Chandler, Arizona has for it city. This rampage has been a barrage of false code violations issued against the condition of the Petitioner's home, its buildings and their appearances. The general rule is if the homeowner will not comply with the view of the City Officials of the City of Chandler, Arizona they will be driven out by any means available. False code violations normally cause individuals who resist to move and leave the City of Chandler. The Petitioner chose however to no be forced out of his home. No one dares to stand up to the City of Chandler as to do so is to provoke the wrath of the municipality. They then move into a complete kill and destroy mode and are relentless in their pursuit until they fulfill their sense of justice against the one who has opposed them.

8. Just recently in a case filed against one of the Police Officers of the City of Chandler, Arizona who had been charged with a murder for killing a young housewife over a very minor misdemeanor offense, a statement was made, which was publicly addressed in a major Arizona Newspaper, by a fellow Police Officers who admitted making a false report. He stated that the mind set of the City of Chandler police training department is "Police Never Lose" and they are to win at any cost.

9. This same arrogant attitude prevails among Code Enforcement Officers who issue code

violations for the City of Chandler and who are under the direction of the City of Chandler Police Department. These Code Enforcement Officers are hell bent to win at any cost. It does not matter if they are wrong or if they cannot prove the violation, they are the law and all will conform.

10. When Petitioner dared to stand up for his right to life, liberty and pursuit to happiness guaranteed by the State of Arizona and United States Constitutions he invoked the wrath of the beast and they have made it evident in their pursuit that they plan to get him and bring him to justice!

11. On August 17, 1999, after the occurrence of the events described in the above paragraphs, Petitioner arrived at home from work to find that a citation had been issued against him by the City of Chandler which was completely false. He had been cited for leaving his vehicle improperly stored on his driveway. The second violation was he was changed with storing a box on his front porch. The two violations were both completely false and were preposterous! The violations were premeditated acts of harassment by the City of Chandler against the Petitioner for standing up for his rights in the satellite issue many years back. There are no laws, codes, or authorities which prevent a citizen of Chandler, Arizona from parking a car on their own personal driveway which is private property. Further, there is certainly no law, code or authority that would prevent an owner from leaving a box on

his porch. The box he was cited for had been left there by the U.S. Postal Service and it is for certain that they were not cited for violating an ordinance by the City of Chandler. The Petitioner lodged a complaint with the Mayor's office of Chandler, Arizona over the sheer absurdity of the citation and it was then dropped by the City of Chandler, Arizona. The Petitioner then once again bore the expense of his time, personal resources and mental and emotional anguish of their harassment.

12. On or about July 24, 2000, Petitioner was once again cited by the City of Chandler for violating city ordinances regarding his workshop situated on the Petitioner's property which was adjacent to his residence. Citation No. 00-057884 issued by the City of Chandler Code Enforcement Officer, was for the workshop of Petitioner. The citation said the building did not meet the "height and area restrictions" and did not meet building set back requirements. It is a fact that the City of Chandler code provides for a maximum height of 15 feet and the height of the Petitioner's workshop has always been a height of 11 feet and nine inches at its highest point. The maximum area per code is thirty percent (30%) while the workshop area is well under this cited code. The setback for the building is a full five (5) feet from the neighboring wall and none at the rear due to the alley access. In short, there are absolutely no codes whatsoever in

existence, no have there ever been, that place Petitioner's workshop to be in violation.

14. Petitioner was once again forced to take resources, and time away from employment to retrieve the permit records from the City of Chandler and deal with false citation issued by Code Enforcement Officer Donald Slomcinsky who maliciously and purposely issued a wrongful code citation. This was just another continued act of harassment against the Petitioner by the City of Chandler over the satellite dispute in 1992.

15. On July 27, 2000, Petitioner arrived at the record department of the City of Chandler to retrieve the records on his property. He was told by City of Chandler, Ron Damp, that the City of Chandler had lost all of the records prior to 1995. The Petitioner could not get a copy of the permits to prove that his building was in proper compliance as they had been lost. This is a violation of state law.

16. Petitioner then returned to the office of the Mayor, whose staff subsequently directed him to the neighborhood services department of the Chandler Police Department. The Petitioner was informed by Chandler employee Dick Charapata that if he could not find or produce copies of the permits from the City of Chandler that it was their position that they never existed, even though it was the City of Chandler's duty to preserve the records.

17. On the contrary, in July of 2004, we see in a major Newspaper Maricopa County Attorney Rick

Romley bringing felony charges against a Glendale City Council member and the City Clerk for altering financial documents and for destroying public records. Is the City of Chandler any different for destroying public records. Is the City of Chandler any different than other cities in the State of Arizona? If the City of Chandler exempt from being charged by the Maricopa County Attorney when they are guilty of losing vital records from the year 1995 back? It becomes very easy to have a campaign of code violations against the home owners in the City of Chandler when all of the records have been destroyed and the attitude is "if you do not have permits or records of them they do not exist." This was a statement made to Petitioner by a City of Chandler employee Dick Charpata.

18. The Respondents failure to maintain proper records constitute multiple violations of the Arizona Revised Statutes. This failure violates the due process and equal protection rights of Petitioner as he is charged with a wrong doing and has no way to prove his innocence. How could a municipality like the City of Chandler lose all of the housing records from 1995 back? Were they purportedly destroyed?

19. Petitioner put in a swimming pool in his home and received a permit to do so. During the construction of the swimming pool at a minimum there were more than 20 different inspections made on this project by many of the City of Chandler employees and the fact is this same workshop was

on this project by many of the City of Chandler employees and the fact is this same workshop was in its regular place during this time of construction. It was never mentioned this workshop was not in compliance during any of these inspection visits.

20. Chandler employee Dick Charpata stated to Petitioner that he believed Petitioner was lying about having a permit for the workshop and implied Petitioner built the workshop without any permits.

21. At this point, the Petitioner had enough as the City of Chandler and its employees were ruining his life. His job, health, emotions, and personal well being were at stake. His financial future was also being ruined by this parade of harassment alleged against him by the Respondents. He was fearful of what they would do next so in self defense, he filed a lawsuit to bring them before a jury who would not rule by influence but in accord with the case merits.

22. This long 12-year rampage by the City of Chandler, Arizona against the Petitioner was the basis for his lawsuit against the City of Chandler and their City Code Enforcement Officer Donald Slomcinsky in the Superior Court of the State of Arizona. In this case Petitioner sought damages on four counts for $2,000,000.00 or an amount that was to be determined by a jury trial for violation of his God given constitutional rights. The complaint was served and the Respondents accepted and answered. Many Pleadings and responses were file by both parties and not addressed by the Superior Court. The

case was settled by a summary judgment being granted to the Respondents Judge Robert Myers.

May the Supreme Court Take Judicial Notice

Never at any time when the City of Chandler, Arizona was served with a lawsuit which exceeded all legal jurisdictions except the Superior Court in Arizona did any member of the City of Chandler's staff, its attorney Judy K. Skousen, its Mayor or City Council disclose to the Petitioner that there was a 180 day Notice of Claim Rule under ARS 12.821.01 subd: A that precluded anyone from filing against them unless they were first notified. At no time did any one of the four Judges who were assigned to this case inform the Petitioner that unless he complied with the 180 day Notice of Claim Rule under ARS 12.821.01 subd: A, his complaint would be thrown out. This hidden rule was never disclosed to the Petitioner at any time. Thus the constitutional rights of the Petitioner were cancelled by a hidden administrative time bar which make a municipality a judge and a jury in violation of constitutional mandate. The Petitioner did not receive any discovery from Respondents. The judge refused to Petitioner's his motion to compel discovery from the Respondents.

23. Judge Robert Myers granted the Respondents Summary Judgment and he dismissed the case with prejudice when no discovery had been given by the Respondents to the Petitioner based upon the 180 day Notice of Claim Rule in ARS 12.821.01 subd A.

24. There was never a time during the entire court process that a judge ever compelled Respondents to provide discovery to the Petitioner. The word Judges is used as there were (4) different Judges on this case. It is strongly believed by Petitioner that none of the assigned Judges in this case ever read or examined his case file nor considered the merits of his suit. The entire judicial process was a mockery of justice and blatantly violated his rights to due process of law and equal protection under the law. 28 pleadings were filed in Superior Court in this case and then a hearing for Summary Judgment was requested by Respondents. Exactly 180 days had lapsed without any discovery from Respondents. Any one of these Judges could have asked the Petitioner if he had complied with the 180 day rule ARS 12.821.01 subd A rather used this rule as a means to grant Summary Judgment to a powerful municipality and protect them from facing their their wrongful conduct. The records of the City of Chandler dealing with the protection their citizens rights is very notorious and well known in Arizona.

25. The Judge denied Petitioner discovery and ignored Arizona Rules of Civil Procedure violating his own oath of office to uphold the Arizona Constitution and United States Constitution which is held as the highest law in the state of Arizona.

26. His open bias against pro per litigants was personified in his ruling in this case. Justice was impossible under such hostile circumstances? Besides this Arizona Law gives these type of Judges immunity for their acts of self government which ignore the laws given to them as guidelines. They become their own authority. These violations of the rights of the Petitioner were the basis of his lawsuit in the District Court of Arizona.

27. The lawsuit was based upon constitutional violations in the State Superior Court against Petitioner and their denial of his constitutional rights to due process of law and equal protection under the law along with denying him a jury trial so the evidence could be tried without the threat of influence from a large Arizona municipality upon the presiding Judge.

28. The Federal District Court of Arizona ruled after a long period of time that Petitioner had three constitutional issues which could not be dismissed. The Judge dismissed all of the other Appellees named in the complaint stating there were no constitutional issues against them; however, Petitioner was given the right to proceed against the Respondents on the three other counts which were constitutional violations against the Petitioner.

29. The Federal Court Judge refused to dismiss these claims but allowed Respondents to re-file their motion for dismissal at a later date after discovery

was completed. Respondents refused to give discovery to the Petitioner.

30. The District Court Judge know Petitioner filed notices of Discovery with the Federal Court. In both actions, the Superior Court and Federal Court both of the Judges refused to force Respondents to give the Petitioner discovery which censored the ability of Petitioner to prove his case and certainly denied his rights of due process and equal protection under the law. Knowing discovery was not provided they both granted a Summary Judgment to the Respondents wrongfully and in violation of the State and Federal Rules of Civil Procedure. How can the Respondents say that the Petitioner had due process of law and equal protection under the law when they lied in their pleading, presented affidavits with hear say and false allegations from a man who was dead and presented an affidavit of a City Employee who swore that she had knowledge of events that she could not have possibly known. The records the Petitioner sought from the City of Chandler were said to have been lost.. Were they lost or actually destroyed? Discovery provided to the Petitioner under Rule 37 would have solved this mystery? However the Court refused to compel discovery.

31. The Federal District Court Judge failed to cause Respondents to properly address the constitutional violations she had reserved for

Petitioner in her first order denying Respondents original motion for Summary Judgment. The Federal Judge also once again failed to compel the Respondents to provide any type of discovery to Petitioner and ignored a response from Petitioner to Respondents Summary Judgment motion which cited (55) material issues of fact against granting the Respondents a summary judgment.

32. The Judge completely reserved her decision denying dismissal of the case by summary and granted the second summary judgment ruling that the District Court did not have any jurisdiction on this case. The Summary Judgment granted to the Respondents by the District Court was nothing more than a second representation of what happened in the State Superior Court. The District Court ignored all constitutional issues granted to the Petitioner in the first Summary Judgment denial. Rule 26(a)(1), which contains massive case law and constitutional amendments and quotes from the rights of a citizen in Arizona and America which would give the Judge more than enough information to deny summary judgment.] It very much appears that neither the Judge nor the Judge's staff read the pleadings submitted to the Federal District Court of Arizona in this case. It would be impossible to overlook such case law and Rules of Civil Procedure governing summary judgment and then grant summary judgment to the Respondents. The decision was a great abuse of discretion.

33. A pro per litigant could be led to believe that justice in the Arizona Courts is only for the rich and powerful and for those who have political influence and position. To get your case heard on the merits and to avoid being dismissed by **a** summary judgment seems to be almost impossible in most courts in Arizona. The constitutional God given rights to those in America seems to be only something that we talk about and really are not true in Arizona Courts!

34. The Petitioner appeals to the Ninth Circuit Court of Appeals to give the Petitioner the right to due process and equal protection under the law and allow him a jury trial where his peers may examine evidence and hear testimony from witnesses and come to a conclusion about this matter.

35. The Petitioner has suffered for years from the constant harassing that has taken place against him. He has suffered financial hardship to defend himself and has lost the joy of living as for the past 12 years as he has not been able to enjoy his home because of the rampage against him by the City of Chandler and its employees.

The Petitioner presented seven (7) recent newspaper articles about the abuse of the City of Chandler against its citizens as evidence for what he is saying in his brief. There are undoubtedly hundreds of others who have been afraid or did not have the money to stand against their abuse. Can the Ninth Circuit Court of Appeals Judges believe that in

America a citizen could be arrested and put in jail for not having his own yard meet a code established by the City officials of Chandler, Arizona?

36. This entire matter could have been settled years ago had the State Superior Court of Arizona honored the constitutional rights of Petitioner and given him due process of law and equal protection under the law rather than ignore his rights and use a summary judgment to clear the calendar. Is justice only for the right and powerful? Is justice only for those who can afford high priced lawyers? Is not this the reason our founding forefathers set up the right to a jury trial? It will be five year eight months in July of 2006 that this lawsuit has been going on and there has yet to be one time that Petitioner has had to present the merits of his case. The arguments of this brief will show the Ninth Circuit Court of Appeals how that justice has become a mockery in this case and how that the constitutional rights of Petitioner have been willfully and purposely denied by the State of Superior Court and Federal District Court levels in Arizona. A City municipality should not have the power to control its citizens by hundreds of lost records that were on the books that are now gone and ruin the lives of its citizens. The Petitioner seeks a remand for a jury trial in the Federal District Court of Arizona with a different Judge presiding. He seeks a jury trial with unbiased jurors who will examine the evidence and witnesses and make a decision based upon the

evidence and testimony and not paper opinions stated in pleadings submitted by a municipality and their employee Attorney. The Petitioner should not have to qualify to be given a jury trial. This is his right under the Constitution of the United States.

37. Once again, we quote one forefather from the State of Virginia in 1879 as it vividly expresses what is happening in the average court today.

[The inhibition contained in the Fourteenth Amendment means that no agency of the State, or of the officers or agents by whom her powers are exerted, shall deny any person within her jurisdiction the equal protection of the laws. Whosoever by virtue of his public position under a State or federal government deprives another of life, liberty or property, and does so without due process of law, or denies or takes away the equal protection of the laws, violates that inhibition as he acts in the name of and for the State, and is clothed with her power, his act is her act. Otherwise, the inhibition has no meaning, and the State has clothes one of her agents with power to annul or evade it.]

CONCLUSION

WHY PETITION SHOULD BE GRANTED

The Civil Rights Act of 1871 provides:

["Every person who, under color of any statute, ordinance regulations, custom, or usage of any state who subjects or allows any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws

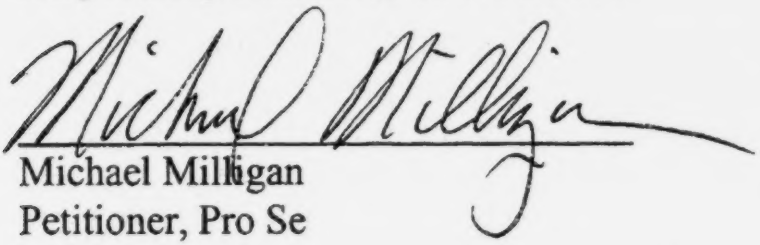
shall be liable to the party injured in an action by law.] In, 42 U.S.C. :1983; [A person includes public officials in their individual capacity. See Neal v. Georgia, 469 F.2d 446 5th. Cir. 1972) and also municipalities. Mondell v. Dept. of Social Services, 4365 U.S. 698 S. Ct. 98 2018, 56 L. ED 611 (1978).

The Petitioner was denied proper due process by a State Court and a Federal District Court on two different complaints for damages. The State Court of Arizona used Rule ARS 12.821.01 Subd A as a bar to the constitutional rights of the Petitioner and did not give any credence to his pleadings. The Superior Court Judge had to know that he would throw out this complaint filed by the Petitioner as he refused to forced the City of Chandler of Arizona to provide discovery to the Petitioner when Petitioner filed a motion to compel discovery. The Petitioner's complaint was also sent to four different Judges in a period of one year which made it impossible for any Judge to actually read the 28 pleading filed and give any true form of consideration to Petitioners case. Not one of these Judges or the Assistant City of City of Chandler, Arizona notified the Petitioner of his need to file a 180 notice of claim or he would lose his rights and his complaint would be thrown out. The Petition should be granted as his rights to a trial and to due process where he can be heard and present evidence never occurred. The Petitioner should not be censored by an administrative law that is not disclosed and shows bias and favor to a public

entity and its employees. The Petitioner filed his complaint in the Federal District Court on the basis of constitutional violation of his rights by the Respondents and the Superior Court of the State of Arizona. The Federal Judge ruled against the dismissal of three of the constitutional counts filed by the Petitioner and sought by Respondents. No hearing was held nor would the District Court Judge compel Respondents to provide discovery to the Petitioner. One year later without any new information presented to the Court the decision was reversed by the District Court and Summary Judgment was granted to the Respondents. The two cases are not the same though they contain many of the same facts. Res Judicata cannot apply to the case in the Federal District Court as it was based upon loss of Constitutional rights the Petitioner experienced in the Superior Court. Res Judicata can only apply if the case is tried and heard on the merits of the evidence and witnesses presented in a trial. This never occurred as Petitioner was given (15) minutes controlled by the Judge to present his case. How can it be called due process and equal protection under the law when the Respondents are protected by ARS 12.820.01 which give the city employees basic immunity and 12.821.01. subd A which basically does the same for the City of Chandler, Arizona and allows them to act as an arm of the court to try your case before you present evidence and testimony to an impartial panel of

juries. It is impossible for the City of Chandler, Arizona to be objective and impartial in dealing with the Petitioner or any other party when they are primarily concerned about their self interests. For these reasons the Writ of Certiorari should be granted and the Respondents should have to face the Petitioner based upon the evidence and witnesses presented against their wrongful acts against the Petitioner.

Respectfully Submitted on 7/21/2006



Michael Milligan
Petitioner, Pro Se

APPENDIX A

Filed March 31, 2004

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Michael Milligan,
Plaintiff,

No. CIV 02-0309 -PHX-MHM

vs.

City of Chandler, Arizona, et al.,
Defendant

ORDER

On February 20, 2002, Plaintiff Michael Milligan, proceeding *pro se*, filed a Complaint asserting several federal and state law claims for which he sought money damages against various city, county and state defendants. The gist of Plaintiff's action is that in 1992, 1999 and 2000, he received "notices" or "citations" regarding alleged violations of neighborhood maintenance standards and city zoning ordinances pertaining to his residence in Chandler, Arizona which he claims constitutes harassment. Before commencing the present lawsuit, Plaintiff filed suit in Maricopa County, Arizona, asserting various claims against the City of Chandler, Arizona, Donald Slomcinsky, a City of Chandler Code Enforcement Officer, and Terry Slomcinsky, his wife. After judgment was entered in favor of Defendants in that case, Plaintiff

filed the instant suite against those same defendants and named as additional defendants the State of Arizona, Maricopa County Superior Court, Maricopa County and the Honorable Robert D. Myers, the judge who presided over Plaintiff's state court lawsuit. In an Order filed on March 31, 2003, this Court dismissed all claims and defendants except Claims III, VI, and VII as asserted against Defendants the City of Chandler and Mr. and Mrs. SLomcinsky, collectively referred to as the City Defendants. The City Defendants have now filed a motion for summary judgment, supported by a separate statement of facts, affidavits and a memorandum of authority, as to the three remaining claims (Dkt. nos 40-47). Plaintiff *pro se* has filed a "motion to deny summary judgment" which the Court has construed as a response in opposition to Defendants' summary judgment motion (Dkt. no. 50). Defendants have filed a reply on summary judgment (Dkt. no. 53). The Court has considered the parties' arguments, affidavits and exhibits on summary judgment and enters the following Order.

I.

Standard of Review.

A motion of summary judgment may be granted only if the evidence shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). To defeat the motion, the non-moving party must show that there are genuine

factual issues "that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,250,106 S.Ct. 2505,2511 (1986). The party opposing summary judgment "may not rest upon the mere allegation or denials of [the party's] pleadings, but... must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e). See also, Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356 (1986).

II.

Background Facts.

In 1987, Plaintiff purchased a single family residence located at 3510 W. Toledo Street, Chandler, Arizona. Plaintiff contends in his Complaint that he was improperly cited for violations of Chandler City Ordinances in 1992, 1999 and 2000 (Dkt. no. 1, Complaint, ¶¶ 5- 27). According to information contained in the July 29, 2003 affidavit of the City of Chandler Records Management Associate, City records indicate three separate instances of code enforcement activity concerning Plaintiff's property prior to the time the Complaint was filed.

In October 1998, Officer Rebozo, Badge No. A25, left of the doorknob of Plaintiff's residence a printed flyer that there were weeds constituting a fire danger in the alley. A re-inspection twenty-one(21) days later indicated that the weed had been

cleaned up and the case was closed. In August 199, Plaintiff was provided a written notice by Officer Heick, Badge No. A24, that there appeared to be an inoperable vehicle illegally stored on Plaintiff's property. A subsequent re-inspection showed the alleged violation had been corrected and the case was closed. In July 2000, Officer Slomcinsky, Badge No. A27, Defendant herein, provided Plaintiff with written notice that a structure on the property appeared to violate a City zoning ordinance.

City records further indicate that at least one structure, which appears to be a workshop, on Plaintiff's property has been constructed without a building permit. The previous owner applied for a permit to legalize the structure but was advised by City officials that the structure did not qualify as a storage shed and that it was required that the structure must comply with the requirements for an accessory structure. The building permit was allowed to expire and the property was sold to Plaintiff with a condition that Plaintiff, as the buyer, would obtain a valid building permit and comply with City requirements regarding the structure. City records indicate that Plaintiff has not appealed to the Zoning Administrator or to the City of Chandler Board of Adjustment challenging the finding that the structure located on the Toledo Street property violated the City's zoning regulations. The City Records Management Associate states in her

affidavit that City records kept in the normal course of business do not indicate that any citations have ever been issued to anyone residing at or owning the property located at 3510 W. Toledo Street, Chandler, Arizona.

With respect to the written notice provided by Defendant Slomcinsky in July 2000, Plaintiff contends that Mr. Slomcinsky on July 28, 2000 photographed Plaintiff's residence while Plaintiff was at work. Plaintiff alleges that he thereafter visited Mr. Slomcinsky's neighborhood in the City of Gilbert, Arizona, in an effort to compare his neighborhood with Mr. Slomcinsky's neighborhood. Mr. Slomcinsky states in an affidavit that Plaintiff come to his home and he (Slomcinsky) telephoned for police assistance out of fear for his family's safety. An officer from the Gilbert Police Department responded to the call and indicated to Plaintiff that he should leave the area or be arrested and Plaintiff complied. It appears that on or about July 31, 2000, Mr. Slomcinsky obtained injunctive type orders against Plaintiff in City of Gilbert court proceeding but the order were subsequently set aside.

On November 16, 2000, Plaintiff filed a suit against the City of Chandler, Donald Slomcinsky and Terry Slomcinsky in Maricopa County Superior Court in a case styled Milligan v. City of Chandler, et al., Case No. CV2000-093157. On or about May 22, 2001, Maricopa County Superior Court Judge

Robert D. Myers, after hearing the parties' argument, entered an Order granting the Defendants' motion for summary judgment and dismissing with prejudice all asserted in Plaintiff's complaint based on Plaintiff's failure to file notice of claim within 180 days of the claims' accrual as required by A.R.S. § 12-821.01.A. Following dismissal of his state court suit, Plaintiff filed the instant lawsuit now pending in this Court.

III.

Discussion.

(A) Subject Matter Jurisdiction.

The Court begins by noting that Plaintiff's allegations contained in the Complaint he filed in Maricopa County Superior Court are virtually the same as many of the allegations contained in the Complaint he has filed in this Court. In his Complaint filed in the Maricopa County Superior Court against the City of Chandler and Mr. and Mrs. Slomcinsky, Plaintiff in paragraphs 5-21 asserted allegation describing the various "citations" he had received from the City of Chandler officials regarding his property in 1992, 1999, and 2000, his visit to Mr. Slomcinsky's neighborhood and the ensuing legal action Mr. Slomcinsky sought against Plaintiff. Plaintiff is his state court suit asserted claims for fraud and misrepresentation, bad faith and fair dealing, respondeat superior and civil racketeering.

The Complaint Plaintiff has filed in this Court

can be separated into two sections. The first section consisting of paragraphs 5-27 concerns the alleged notices or citations issued by the City of Chandler to Plaintiff in 1992, 1999 and 2000 regarding his property, his alleged visit to Defendant Donald Slomcinsky's neighborhood in July 2000 and the ensuing injunctive relief Mr. Slomcinsky sought in legal proceedings against Plaintiff. The second section of the Complaint contains additional allegations in paragraphs 28-35 in which Plaintiff complains about the manner in which his state court lawsuit against the City of Chandler and the Slomcinsky Defendants proceeded and the order on summary judgment Judge Myers entered in favor of Defendants. Plaintiff in the present lawsuit seeks judgment against the City of Chandler and the Slomcinsky Defendants for compensatory and punitive damages, costs and fees and a jury trial based on the alleged actions involving the "citations" or "notices" issued by City of Chandler officials, the injunctive relief obtained by Mr. Slomcinsky and the disposition of Plaintiff's suit filed in Maricopa County Superior Court.

Plaintiff thus has challenged on constitutional and other grounds the legal proceedings that occurred in relation to the injunctive order issued in City of Gilbert proceedings and in the Maricopa County Superior Court. This finding is supported by Plaintiff's "motion to deny summary judgment" in which he contends that he was denied his rights

to due process and equal protection under the law "primarily due to the bias of a Superior Court Judge" (Dkt. no. 50, ¶4). Plaintiff challenges the disposition of his case in Maricopa County Superior Court by contending that wrongful or false information was presented at the hearing in that case, that the court was biased against him, that the court ignored the fact that the City of Chandler had refused to provide him with discovery and that he was denied his right to a jury trial. In his separately-filed "Points and Authorities" memorandum, Plaintiff reiterates these allegations and states that he filed the pending federal lawsuit for damages because of the alleged "mockery of justice" that occurred in his state court lawsuit (Dkt. no. 51, pp. 5-6). Plaintiff in this memorandum has listed fifty-five "material issues of fact", many of which deal with Plaintiff's concerns relevant to the disposition of his state court lawsuit and the proceedings relevant to the injunctive-type orders.

In its pervious Order this Court determined that it had jurisdiction over Plaintiff's claims, including Counts III and VII involving alleged constitutional violations. In light of the additional information that is now of record, the Court must re-examine whether is has jurisdiction over Plaintiff's suit. The Court has an independent obligation to address *sua sponte* whether it has subject-matter jurisdiction. Dittman v. California, 191 F.3d 1020, 1025(9th Cir. 1999).

The Court now determines that is lacks subject matter jurisdiction over Plaintiff's claims based on the *Rooker-Feldman* doctrine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct.1303(1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149(1923). The *Rooker-Feldman* doctrine recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction and does not authorize district courts to exercise appellate review over state court judgments. See Verizon Maryland. Inc. V. Public Service Commission of Maryland, 535 U.S. 635, 644 n.3, 122 S.Ct. 1753, 1759 n.3(2002). In Bianchi v. Rylaarsdam, 334F.3d 895, 898 (9th Cir. 2003), cert. denied, __S.Ct.__, 2004 WL 324440 (U.S. Feb. 23, 2004)(No. 03-828), the Ninth Circuit observed in the context of the *Rooker-Feldman* doctrine, that the federal district court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings, stating as follows:

> *Rooker-Feldman* is a powerful doctrine that prevents federal courts from second-guessing state court decisions by barring the lower federal courts from hearing de facto appeals from state-court judgments: If claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or

> require the district court to interpret the application of state laws or procedural rules, then the federal complaint must be dismissed for lack of subject matter jurisdiction. ...

The *Rooker-Feldman* doctrine further is not limited to claims that were actually decided by the state courts. Review is precluded of all state court decisions in particular cases arising out of judicial proceeding even if those challenged allege that the state court's action was unconstitutional. Bianchi, 334 F.3d at 901.

Plaintiff's present federal lawsuit seeks to disrupt or "un-do" prior state court judgments which this Court lacks jurisdiction to adjudicate. "The *Rooker-Feldman* doctrine prevents lower federal courts from exercising jurisdiction over any claim that is 'inextricably intertwined' with the decision of a state court, even where the party does not directly challenge the merits of the state court's decision but rather brings an indirect challenge based on constitutional principles.' Bianchi, 334 F.3d at 901 n.4. Plaintiff's present lawsuit must be dismissed for lack of subject matter jurisdiction.

(B) In the Alternative, Defendants are Entitled to Summary Judgment.

In the alternative, the Court concludes that Defendants are entitled to summary judgment, based on the following rationale.

(1) Plaintiff's claim for interference with

prospective advantage.

In paragraph 55 of the Complaint, which the Court refers to as Count VI, Plaintiff has asserted a claim based on the state law tort of interference with prospective advantage. Pursuant A.R.S. §§ 12-821.01.A, persons who have claims against a public entity or public employee must file a claim with the appropriate person or persons within 180 days after the cause of action accrues, as follows:

> Persons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim which is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon.

A.R.S. § 12-821.01.A. A "public entity" includes the state and any political subdivision. Warrington by Warrington v. Tempe Elementary School District No. 3, 187 Ariz. 249, 251-52, 928 P.2d 673, 675-

76(App. Ariz. 1996). The time limit for suit against a public entity is a procedural requirement subject to waiver, estoppel and equitable tolling. McGrath v. Scott, 250 F.Supp.2d 1218 (D.Ariz.2003). Plaintiff did not comply with § 12-821.01.A and has not stated any reason to excuse or toll that non-compliance.

In addition, A.R.S.§ 12-821 provides that all actions against any public entity or public employee shall be brought within one year after the cause of action accrues. The last act Plaintiff complains of in the Complaint is alleged to have occurred between July 28, 2000 the date Defendant Donald Slomcinsky allegedly photographed Plaintiff's residence, and November 16, 2000, the date Plaintiff filed his lawsuit in Maricopa County (Dkt. no.1, Complaint, ¶¶21-28). Plaintiff filed his instant lawsuit on February 20, 2002, more than one year after the last actionable allegation contained in the Complaint. Plaintiff's state law claim for interference with prospective advantage is time-barred.

Plaintiff's alleged claim for interference with prospective advantage additionally fails as a matter of law. In order to state a claim for interference with prospective advantage, Plaintiff must allege some contract or business expectancy involving a third party. Paros v. Hoemako Hosp., 140 Ariz. 335, 338, 681 P.2d. 918, 921 (Ariz. App. 1984). Plaintiff has not alleged that he lost any contract or

business expectancy as a result of any action on the part of any of the City Defendants. The City Defendants' motion for summary judgment as to this claim (Count VI) is granted.

(2) Plaintiff's claims for violation of constitutional rights.

In paragraphs 47-48 of the Complaint, which the Court refers to as Count III. Plaintiff has asserted a claim for denial of due process based on the following allegations:

> 47. Defendants employed the use of the City government and State judicial branch, for the purpose of obtaining an unfair advantage over Plaintiff, and taking a grossly oppressive and unfair advantage of Plaintiff's necessities and distress, exercising coercive force.
>
> 48. As a direct and proximate result of the actions of Defendants, Plaintiff has been denied due process of law and has suffered and continues to suffer grievous emotional, physical and financial injury, in an amount to be determined at trial.

In paragraph 56 of the Complaint, which the Court has construed as Plaintiff's Count VII, Plaintiff has asserted a claim for violation of the Fourteenth Amendment to the United States Constitution. Plaintiff alleges in this claim the following allegations:

56. The Plaintiff was denied his right of personal liberty to the pursuit of happiness and peaceful enjoyment of his life and possessions. The City of Chandler denied him these basic rights by a campaign of harassment against him using false building code citation and **Gestapo Police Actions** against him all of which has forced him into various courts of law to defend himself against their wrongful acts. He has lost the use of many of his basic liberties in relation to his home and property and his rights to lead a quiet peaceful enjoyable life because of their wrongful attacks against him. The Plaintiff seeks the maximum damages allowed by the law as determined by a jury in a court of law.

Defendants contend that these claims must be dismissed because no claim may be based on a direct violation of the United Stated Constitution. The Ninth Circuit has held that a plaintiff may not sue a defendant directly under the Constitution where 42 U.S.C. § 1983 provides a remedy, even if that remedy is not available to the plaintiff. See Martinez v. City of Los Angeles, 973 F.3d 704, 705(9th Cir. 1992)("[p]laintiff has no cause of action directly under the United States Constitution ... a litigant complaining of a violation of constitutional right must utilize 42 U.S.C. § 1983").

Furthermore, as Defendants contend, to the

extent that Plaintiff is attempting to assert claims for a violation of civil right under color of state law under §1983, any claim based on the "notices" issued in 1998 and 1999 must be dismissed as barred by the applicable two-year statute of limitations. TwoRivers v. Lewis, 174 F.3d 987, 991 (9th Cir. 1999)([i]n Arizona, the courts apply a two-year statute of limitations to § 1983 claims"). Plaintiff filed the present Complaint in this Court on February 20, 2002, more than two years after the 1998 and 1999 "notices" issued. Similarly, regarding the alleged 1992 "citation", any § 1983 claim based on the allegation that the City of Chandler adopted an ordinance in 1985 regarding satellite dishes which the City attempted to enforce against Plaintiff in 1992 also is barred by the two-year limitations period.

The Court construes Plaintiff's claim that he was denied due process as set forth in paragraphs 47-48 of his Complaint (Count III) as relating to the proceedings in Maricopa County Superior Court. As discussed above, this Court has no jurisdiction to review a state court judgment.

The Court otherwise construes Plaintiff's constitutional claims asserted in paragraphs 47-48 and 56 (Counts III and VII) as based on an alleged pattern of harassment against him by an official of officials of the City of Chandler. "There is little doubt... that Plaintiff has a property interest in his house and surrounding property." Luedeke v.

Village of New Paltz, 63 F.Supp.2d 215, 220 (N.D.N.Y. 1999). It is not clear, however, how the constitutional rights cited by Plaintiff have been implicated by the "notices" allegedly issued regarding his property.

Information in the affidavit of the City of Chandler Records Management Associate regarding the "notices" issued in 1998 and 1999 indicates that the alleged violations were either corrected or resolved and the cases were closed (Dkt. no. 46, ¶4-E&F). Plaintiff has not submitted any information of record that disputes Defendants' information relevant to these matters. Plaintiff has simply stated in his "Points and Authorities" memorandum that "[h]e has evidence to prove his home is and has always been in compliance with the City of Chandler Building codes" (Dkt. no. 51, p.18). Plaintiff, however, has not provided any such evidence. While Plaintiff has submitted his own affidavit in which he challenges the information contained in the affidavit of the City Records Management Associate, he has not provided information concerning the disposition of the 1998 or 1999 "notices." The record is void of evidence that an assessment, lien or similar encumbrance was placed on Plaintiff's property or that he was deprived of notice and a hearing regarding the 1998 and 1999 "notices." See Luedeke, 63 F.Supp.2d at 220-24 (city's enforcement of snow removal ordinance resulted in fines and threatened lien

implicated constitutional rights). Plaintiff therefore has not specifically shown how the rights he has identified – due process, personal liberty, pursuit of happiness and peaceful enjoyment of his life and possessions - were violated as a result of the 1998 and 1999 "notices." See Hernandez v. City of Rochester, 212 F.Supp.2d 143, 150 (W.D.N.Y. 2002)(plaintiff's denial of various zoning and health code violations, without evidence to support their claim, insufficient to create a genuine issue of material fact for trial), aff'd, 2004 WL 190052 (2d Cir. 2004)(unpublished).

With respect to the July 2000 "notice" issued by Defendant Donald Slomcinsky, the City of Chandler's Records Management Associate states in her affidavit that the alleged violation concerning the structure on Plaintiff's property has not been resolved, that it remains pending and that Plaintiff has not pursued an appeal to the Board of Adjustment under Section 35-2503 of the Chandler City Code regarding this notice (Dkt. no. 46, ¶¶4-G, 6). Again, Plaintiff has not submitted any information of record that disputes this evidence. Plaintiff has simply stated in his "Points and Authorities" memorandum that Mr. Slomcinsky "harassed Plaintiff by issuing his a code violation on his property that did not exist" (Dkt. no. 51, p. 19). Plaintiff's affidavit does not mention the disposition of the July 2000 "notice." Based on the undisputed information of record, there has been no final

determination regarding the July 2000 "notice" and any claim pertinent to it is not rip for review. See Weissman v. Fruchtman, 700 F. Supp. 746,750-51, 755-56(S.D.N.Y. 1988)(substantive and procedural due process claims dismissed where plaintiffs did not pursue administrative appeal regarding building permit revocation). Plaintiff additionally has not shown how the constitutional rights he has identified have been violated by the issuance of this "notice." Defendants' motion for summary judgment is granted as to Plaintiff's claims based on alleged constitutional violations (Counts III and VII).

Having determined that Defendants are entitled to summary judgment for the reasons discussed above, it is unnecessary for the Court to consider the other issues raised in Defendants' summary judgment motion, including whether Defendant Donald Slomcinsky is entitled to qualified immunity.

Accordingly,

IT IS OFFERED that Defendants' motion for summary judgment (Dkt. no. 40) is granted as to Plaintiff's remaining claims in this lawsuit (Counts III, VI and VII).

IT IS FURTHER ORDERED that Judgment shall be entered accordingly.

IT IS FURTHER ORDERED that Judgment shall be entered in accordance with the Court's Order entered on March 31, 2003 (Dkt. no.22) dismissing

all claims with prejudice against Defendants State of Arizona, Maricopa County Superior Court, the Honorable Robert D. Myers and Maricopa County, and dismissing Count V with prejudice and Counts I, II and IV as to the Defendants City of Chandler, Donald SLomcinsky and Terry Slomcinsky.

Order

Docket Text: ORDER by Judge Mary H. Murguia that defendants' Motion for summary judgment [40-1] is granted as to plaintiff's remaining claims in this lawsuit (Counts III, VI and VII). FURTHER ORDERED that Judgment shall be entered accordingly. FURTH ORDERED that Judgment shall be entered in accordance with the Court's Order entered on 3/31/03 [22-1] dismissing all claims with prejudice against defendants State of Arizona, Maricopa County Superior Court, the Honorable Robert D. Myers and Maricopa County, and dismissing Count V with prejudice and Counts I, II and IV as to the defendants City of Chandler, Donald Slomcinsky and Terry Slomcinsky to dismiss case (cc: all counsel)(KMG)

Judgment

Docket Text: JUDGMENT; IT IS ORDERED AND ADJUDGED granting the Defendants' Motion for Summary Judgment as to the remaining claims (Counts III, VI and VII) in this lawsuit Plaintiff shall take nothing, this action and complaint are hereby dismissed. (cc: all counsel) re: judgment [58-1](KMG)

APPENDIX B

Filed April 07,2005
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL MILLIGAN, Plaintiff - Appellant,
v.
CITY OF CHANDLER; et al., Defendants - Appellees.

No. 04-15910

D.C. No. CV-02-00390-PHX-MHM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Mary H. Murguia, District Judge, Presiding
Submitted April 4, 2005**
Before: KOZINSKI, HAWKINS, and CLIFTON, Circuit Judges.

Michael Milligan appeals pro se the district court's summary judgment for defendants in his action against city, county, and state officials alleging that * This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36–3 ** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). improper zoning citations issued against him and subsequent state court proceedings violated his constitutional

rights and state tort law. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, *Noel v. Hall*, 341 F.3d 1148, 1154(9th Cir. 2003), and may affirm on any ground supported by the record, *Oscar v. Univ. Students Co-op Ass'n*, 965 F.2d 783, 785 (9th Cir. 1992). The district court erred in concluding that the *Rooker-Feldman* doctrine barred the constitutional claims arising out of Milligan's state court proceedings because Milligan alleged that the defendants misrepresented facts so that an injunction would be issued against him. *See Noel*, 341 F.3d at 1163 (indicating the "where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction."). The district court also erred in concluding that Milligan failed to properly allege the elements of his constitutional claims, and to plead them under 42 U.S.C. § 1983. *Radcliff v. Landau*, 883 F.2nd 1481, 1482 (9th Cir. 1989)(pro se complaints are to be construed liberally and deficiencies are to be permitted to be corrected through amendment); *see also McCalden v. California Library Ass'n*, 955 F.2nd 1214, 1223 (9th Cir. 1990)(holding that it is not necessary to state the statutory or constitutional basis for a claim as long as the underlying facts are present). We nevertheless affirm the district court's judgment. Milligan's state claims against the "public entity"

defendants and their employees are untenable under Arizona's one-year statute of limitations because he failed to file a Notice of Claim within 180 days after the cause of action accrued. *See Mulleneaux v. State*, 950 P.2nd 1156, 1161 (Ariz. Ct. App. 1997)(citing Ariz. Rev. Stat. § 12-821.01). Further Milligan's constitutional claims are barred by *res judicata*, as they were raised in the earlier state court action, and a final judgment precludes parties from relitigating any issues connected with the action "that were or could have been raised in that action." *Rein v. Providian Fin. Corp.*, 270 F.3d 895,898-99 (9th Cir. 2001). All pending motions are denied. **AFFIRMED.**

APPENDIX C

Filed and Entered on April 7, 2005
UNITED SATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL MILLIGAN,	No. 04-15910
Plaintiff - Appellant,	D.C. No. CV-02-00390-PHX-MHM
v.	
CITY OF CHANDLER; et al.,	
Defendants - Appellees.	**JUDGMENT**

Appeal from the United States District Court for the District of Arizona (Phoenix). This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Phoenix) and was duly submitted. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause by, and hereby is **AFFIRMED.**

Filed and entered Thursday, April 07, 2005

APPENDIX D

Filed on April 25, 2005

MICHAEL MILLIGAN, Plaintiff - Appellant, v. CITY OF CHANDLER; et al., Defendants - Appellees.

No. 04-15910

D.C. # CV-02-00390-PHX-MHM

District of Arizona (Phoenix)

ORDER

Before: KOZINSKI, HAWKINS, and CLIFTON, Circuit Judges. The panel has voted to deny Appellant's petition for panel rehearing. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P.35. The petition for panel rehearing and the petition for rehearing en banc are denied. No further filings will be accepted in this closed appeal.

APPENDIX E

Filed on May 9, 2006

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL MILLIGAN, Plaintiff - Appellant, v. CITY OF CHANDLER; et al., Defendants -Appellees.

No. 04-15910

D.C. No. CV-02-00309-PHX-MHM

JUDGMENT

Appeal from the United States District Court for the District of Arizona (Phoenix). This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Phoenix) and was duly submitted. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is

AFFIRMED.

Filed and entered Thursday, April 07, 2005

APPENDIX F

April 7, 2005

Milligan v. City of Chandler, 135 Fed.Approx. (9th Cir. 04/07/2005)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04-15910

135 Fed. Appx. 7,2005.C09.0001186

April 7, 2005

MICHEAL MILLIGAN,
PLAINTIFF- APPELLANT,

V.

CITY OF CHANDLER; ET AL.,
DEFENDANTS- APPELLEES.

Appeal from the United States District Court for the District of Arizona Mary H. Murguia, District Judge, Presiding D.C. No. CV-02-00390-PHX-MHM NOT FOR PUBLICATION

MEMORANDUM*fn1

Submitted April 4, 2005*fn2

Before: KOZINKSI, HAWKINS, and CLIFTON, Circuit Judges.

Michael Milligan appeals pro se the district court's summary judgment for defendants in his action against city, county, and state officials alleging that improper zoning citations issued against him and subsequent state court proceedings violated his constitutional rights and state tort law. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, *Noel v. Hall*, 341 F.3d 1148, 1154(9th Cir. 2003), and may affirm on any ground supported by the record, *Oscar v. Univ. Students Co-op Ass'n*, 965 F.2d 783, 785 (9th Cir. 1992). The district court erred in concluding that the *Rooker-Feldman* doctrine barred the constitutional claims arising out of Milligan's state court proceedings because Milligan alleged that the defendants misrepresented facts so that an injunction would be issued against him. *See Noel*, 341 F.3d at 1163 (indicating the "where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction."). The district court also erred in concluding that Milligan failed to properly allege the elements of his constitutional claims, and to plead them under 42 U.S.C. § 1983. *Radcliff v. Landau*, 883 F.2nd 1481, 1482 (9th Cir. 1989)(pro se complaints are to be construed liberally and deficiencies are to be permitted to be corrected through amendment); *see also McCalden v. California Library Ass'n*, 955

F.2nd 1214, 1223 (9th Cir. 1990)(holding that it is not necessary to state the statutory or constitutional basis for a claim as long as the underlying facts are present). We nevertheless affirm the district court's judgment. Milligan's state claims against the "public entity" defendants and their employees are untenable under Arizona's one-year statute of limitations because he failed to file a Notice of Claim within 180 days after the cause of action accrued. *See Mulleneaux v. State*, 950 P.2nd 1156, 1161 (Ariz. Ct. App. 1997)(citing Ariz. Rev. Stat. § 12-821.01). Further Milligan's constitutional claims are barred by *res judicata*, as they were raised in the earlier state court action, and a final judgment precludes parties from relitigating any issues connected with the action "that were or could have been raised in that action." *Rein v. Providian Fin. Corp.*, 270 F.3d 895,898-99 (9th Cir. 2001). All pending motions are denied. **AFFIRMED.**

Opinion Footnotes

*fn1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

*fn2 The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P.34(a)(2).

PROOF OF SERVICE

I, Michael Milligan, do swear or declare that on September 7, 2006, as required by Supreme Court Rule 29 I have served for three (3) copies of the PETITION WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

Judy K. Skousen, Assistant City Attorney for City of Chandler, Arizona, Mail Stop 602, P.O. Box 4008, Chandler, Arizona 85244-4008

Terry Goddard, Arizona Attorney General
Michael G. Frost, Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007

I declare under penalty of perjury that the foregoing is true and correct. Executed on Sept. 7, 2006

Michael Milligan